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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,502	11/09/2001	William P. Acker	107044-0003P1	3692
24267	7590	05/04/2004	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			WINTER, GENTLE E	
			ART UNIT	PAPER NUMBER

1746

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/040,502

Applicant(s)

ACKER ET AL.

Examiner

Gentle E. Winter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I in Paper No. 031004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Response to Remarks***

2. The Remarks that Ren's barrier is not responsive to a signal, rather it is a pin hole or slit in the anode current collector that results in restricted methanol flow. It does not change in response to a signal to vary the concentration of methanol. The Remarks, further indicate:

“Applicants' invention, on the other hand, involves a responsive system that can make adjustments to vary the concentration as desired in a particular application. The claim has been amended to reflect the Remarks.

3. The amendments and arguments have distinguished claim 5 from Ren and the rejection is therefore withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4,810,597 to Kumagai et al. "Kumagai".

5. Claim 5 is anticipated in the following manner. Claim 5 and Kumagai disclose a method of regulating methanol concentration in a direct methanol fuel cell system comprising: providing a concentration regulator, coupled to a source of methanol or a source of water or both, ("the compensation device 18 controls the concentration of methanol" column 4, line 10 *et seq.*). The claim additionally discloses that the regulator is responsive to a control signal for increasing or decreasing the concentration of methanol supplied to a fuel cell and sensing one of a group of fuel cell operating characteristics. (When the open-circuit voltage of the unit cell is sensed by the voltmeter 17). The sensed characteristics include ... potential at a portion of an anode of said fuel cell which is proximate to an end of a methanol flow path, an open circuit potential of said fuel cell. ("open-circuit voltage and the methanol concentration ..." column 3, line 64 *et seq.*). Additionally the claim includes the step of periodically, alternately sensing another one of said group of fuel cell operating characteristics; and using said alternately sensed operating characteristics to generate a control signal directing said concentration regulator to control a concentration of methanol in said fuel cell. ("When the open-circuit voltage of the unit cell is sensed by the voltmeter 17, the compensation device 18 controls the concentration of methanol to be a predetermined value by the water feed valve 19 on the basis of the relationship between the open-circuit voltage and the methanol concentration ..." column 3, line 64 *et seq.*). The Kumagai invention relies on the monitoring of voltage and methanol concentration column 2, line 16 *et seq.*

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

7. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

8. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,589,679. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations disclosed in claim 6 are substantively identical. The fact that the issued claim

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specifies that a value may be collected, and compared to a previously collected value, in addition to the other limitations make claim 6 properly anticipate claim 5.

*Allowable Subject Matter*

10. Claims 1 and 2 are allowed.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. USSR Author's Certificate SU 1,610,522 A1 is not drawn to a DMFC, nor is it apparent that the system and associated method of this reference rely on two different operating characteristics.

13. United States Patent No. 6,673,480 to Wilkinson et al. "Wilkinson" (Corresponds to WO00 02282 A) fails to disclose a variable methanol concentration method. The Wilkinson does sense, but it is not clear that the system acts to control methanol concentration based on the sensed criteria.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday-Friday 7:00-3:30.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

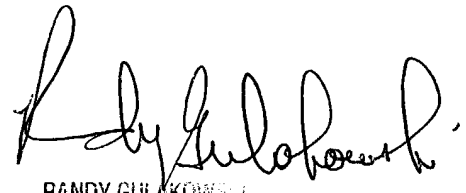
18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gentle E. Winter  
Examiner  
Art Unit 1746

April 29, 2004

A handwritten signature in black ink, appearing to read "Randy Gulakowski". The signature is stylized with large, flowing loops.

RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700